



**THE ATTORNEY GENERAL
OF TEXAS**

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May 21, 1971

Honorable Clyde Slavin
County Attorney
Donley County Courthouse
Clarendon, Texas 79226

Opinion No. M-867

Re: Qualifications of applicants
for incorporation of a
new town pursuant to Art.
1134, etc., V.C.S.

Dear Mr. Slavin:

Your request for an opinion from this office presents the following questions:

1. Do the applicants referred to in Article 1134 V.A.T.S. have to reside within the boundaries of the proposed town for 6 months prior to their becoming eligible to sign the petition seeking incorporation?

2. Does the term "inhabitants" as used in Article 1136, V.A.T.S. refer to the populace in general or does it make reference only to the resident qualified electors residing within the territory sought to be incorporated?

This opinion will deal with these questions in the order in which they are presented.

Article 1134 states that if the inhabitants of a town desire to be incorporated, ". . . at least 20 residents thereof, who would be qualified voters under the provisions of this chapter, . . ." may file an application with the County Judge setting forth their desire to be so incorporated. The statute states that the application must be signed by 20 residents who would be qualified to vote under Article 1137, Vernon's Civil Statutes, which specifically states that an elector is one who has attained the age of twenty-one (21) years and "who has resided within the limits of the proposed town for 6 months" next proceeding any such election and who is otherwise qualified under Article 5.02 of the Election Code, Vernon's Civil Statutes. It is quite clear that at the time the application is signed

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the applicants must be qualified electors, meaning among other things that they must have resided within the territory sought to be incorporated for at least 6 months.

Article 1136 sets forth the duties of the County Judge in calling an election when presented with a statutory petition and satisfactory proof that the town or village contains the requisite number of inhabitants. The word "inhabitants" as used in Chapter 11, Title 28, of the Revised Civil Statutes of Texas, 1925, would appear to have but a single meaning.

Article 1133:

"Where a town or village contains more than two hundred (200) . . . inhabitants, it may be incorporated as a town or village . . ."

Article 1134:

"If the inhabitants of such town or village desire to be so incorporated, at least twenty residents thereof, who would be qualified voters under the provisions of this chapter, shall file an application . . ."

Article 1136:

"If satisfactory proof is made that the town or village contains the requisite number of inhabitants, the county judge shall make an order for holding an election . . ."

The "inhabitants" of a town or village would appear to be those persons who have established permanent residences or domiciles in that particular community, Houston Printing Co. v. Tennant, Texas, 120 Tex. 539, 39 S.W.2d 1089 (1931) and would not refer merely to the "resident qualified electors" of the town or village who would of course be included within the term "inhabitants".

To hold that the judge must be satisfied that there are more than 200 inhabitants who are also resident qualified electors within a town or village before he can order

an election for its incorporation would be to add an additional requirement to those set out in the statutes.

The only time the statutes call for one to be a qualified elector is in the case of the parties petitioning the court for such incorporation as specifically set out in Article 1134. It would therefore seem reasonable to assume that the legislature would have with equal clarity included this requirement if it intended to be a part of the requisites of Articles 1133 and 1136.

In considering the case of Dallas G. Perkins V. Reed Ingalshe, 162 Tex. 456, 347 S.W.2d 926 (1961) we must be careful not to infer from the court's language that an area cannot be incorporated unless it contains 200 resident qualified electors.

" . . . When the county judge is presented with a statutory petition, and proof satisfactory to him has been made that the territory sought to be incorporated contains the requisite number of resident qualified electors, then the county judge has no discretion as to whether or not he will call the election, but he must do so"
(at p. 930).

A careful reading of the case shows that the Court used the words "resident qualified electors" to mean "inhabitants" when it wrote the above quote.

If the area does contain 200 resident voters, then surely the requirements of the statutes have been met, as they would be if it were shown to the court that the area to be incorporated contained 200 inhabitants, 20 of which are the resident qualified electors who signed the petition for incorporation.

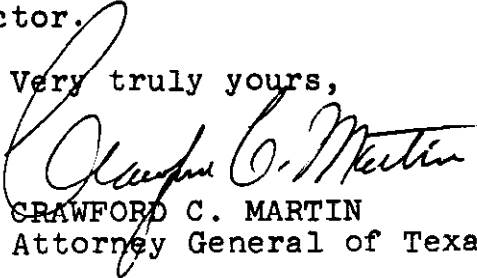
S U M M A R Y

In order to incorporate a new town pursuant to Article 1134, et seq, Vernon's Civil Statutes, the applicants signing the petition for incorporation must be qualified electors and must have resided within the area sought

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to be incorporated for at least 6 months and satisfactory proof must be shown the County Judge that the area contains more than 200 inhabitants. In this connection, the term "inhabitants" as used in the statutes does not mean "resident qualified electors", though an "inhabitant" might also be a qualified elector.

Very truly yours,


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